

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re: ARC AIRBAGS INFLATORS
PRODUCTS LIABILITY LITIGATION

ALL CASES

Case No.: 1:22-md-03051-ELR

MDL No. 3051

Judge: Eleanor L. Ross

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' NOTICE OF
SUPPLEMENTAL
AUTHORITY**

Defendants' Notice of Supplemental Authority (Dkt. 291) misconstrues the recent announcement by the National Highway Traffic Safety Administration ("NHTSA") and misstates the relevance of NHTSA's investigation to Defendants' pending motions to dismiss.

As Plaintiffs previously informed the Court, following a multi-year investigation, NHTSA concluded there is a safety defect in frontal driver and passenger airbag inflators manufactured by Defendant ARC Automotive, Inc. On April 27, 2023, NHTSA sent ARC a letter stating the agency "tentatively concluded that a defect related to motor vehicle safety exists in the frontal driver and passenger air bag inflators under investigation that were produced before installation of borescopes on all toroidal inflator manufacturing lines in January 2018." Dkt. 157

¶ 1. On May 31, 2023, NHTSA issued a Special Order requiring ARC to respond to questions under oath and produce certain documents regarding its airbag inflators. Dkt. 87. On September 5, 2023, NHTSA issued an Initial Decision again concluding the ARC inflators “are defective and pose an unreasonable risk of death or injury, and therefore should be recalled.” Dkt. 165. The agency reiterated this conclusion in its August 5, 2024 Supplemental Initial Decision, which stated the airbag inflators “contain a defect related to motor vehicle safety” that “poses an unreasonable risk of serious injury or death to vehicle occupants.” Dkt. 267.

Defendants seek refuge from these repeated findings by pointing to a December 13, 2024 memorandum in which NHTSA stated “further investigation [into the Inflator Defect] is warranted.” Dkt. 291-1. Critically, however, the agency did not revisit, let alone retract, any of its prior findings regarding the existence or seriousness of the defect. Instead, NHTSA said only that it needed more time to consider whether there are “technical and engineering differences between the inflators as incorporated into the manufacturers’ respective vehicles, along with process differences between the relevant plants and manufacturing lines.” *Id.*

Far from undermining its prior decisions, NHTSA’s recent memorandum further supports the agency’s earlier conclusions. For instance, NHTSA will ask ARC “for more detail regarding ARC’s inflator production process in each of ARC’s manufacturing plants, including its use of friction welding and borescope

inspections.” *Id.* This is wholly consistent with the agency’s statement in the August 5, 2024 Supplemental Initial Decision that it “has identified evidence during its investigation that connects [airbag] ruptures to the friction welding process, which has created, in some instances, blockage material, including excessive weld flash, and, in others, insufficient friction weld bonds.” Dkt. 267-1 at 63,474.

Regardless, Defendants misstate the impact of NHTSA’s investigation on this case. Contrary to their assertion, Plaintiffs’ operative complaint does not “rel[y] almost entirely on NHTSA’s self-described ‘tentative’ conclusion in April 2023 that a defect exists in” the ARC Inflators. Dkt. 291 at 1. The complaint, independent of any federal investigation or findings, describes the design of ARC’s hybrid toroidal inflators (Dkt. 157 ¶¶ 273–79); ARC’s decision to rely on a design process that generates asymmetrical, brittle, and sometimes excess weld flash in its inflators (*id.* ¶¶ 283–91, 293–304); ARC’s failure to institute quality controls with respect to asymmetrical or excess weld flash in its inflators (*id.* ¶ 292); and ARC’s 2018 decision to finally implement a borescope system to visually inspect its inflators’ friction welds (*id.* ¶ 305).¹ That NHTSA later issued tentative decisions with these

¹ Defendants’ contention is especially off the mark given that this multidistrict litigation was created in December 2022, well before NHTSA’s April 2023 letter. Dkt. 1 (JPML Transfer Order). And many of the initial complaints contained the same factual allegations regarding the nature of the defect that remain in the Consolidated Class Action Complaint. *See, e.g.*, Compl. ¶¶ 53–92, *Lovett v. ARC Auto., Inc.*, No. 23-cv-282-ELR (N.D. Ga.) (initially filed in M.D. Tenn. on Sept. 16, 2022).

same factual findings—and concluded the inflators contain a safety defect that necessitates a recall—only reinforces Plaintiffs’ arguments.

In any event, to withstand Defendants’ Rule 12 motions, Plaintiffs need only *plausibly allege*, not prove, a safety defect in the Class Vehicles. Plaintiffs have plainly satisfied that requirement.

Dated: January 7, 2025

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